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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,540	12/22/2000	Vincent E. Majkowski	GEMS:0130/YOD(15-EC-5791)	2091
7590	06/07/2006		EXAMINER JABR, FADEY S	
Patrick S. Yoder Suite 330 7915 FM 1960 West Houston, TX 77070			ART UNIT 3639	PAPER NUMBER

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/747,540	MAJKOWSKI, VINCENT E.	
	Examiner	Art Unit	
	Fadey S. Jabr	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims **35 and 40** have been amended. Claims **1-44** remain pending and are again presented for examination.

Response to Arguments

1. Applicant's arguments filed 20 March 2006, with respect to the rejection under 35 U.S.C. section 112, second paragraph, have been fully considered but they are not persuasive.
2. Applicant's arguments filed 20 March 2006, with respect to the rejection under 35 U.S.C. section 103, have been fully considered but they are not persuasive.
3. Applicant's suggestion that the Examiner intended to reject claim 19 under 35 U.S.C. section 112, second paragraph, is correct.
4. Applicant argues (with respect to claims **1-6 and 20-24**) that none of the claims recite that the system determines desired answers from the user, but rather the claims require that a plurality of questions be presented that are designed to establish certain user preferences and data. Examiner notes that the rejection was based on the recitation "the plurality of questions is designed to determine". What are the questions that are presented to establish certain user answers? Also, it is unclear how the questions are designed to determine this information from the users. The claims are still considered vague and indefinite and therefore the rejection is not withdrawn.
5. Applicant argues that the references are nothing more than three completely unrelated references with no reasonable basis for their combination other than the recitations of the

Art Unit: 3639

pending claims. Examiner notes Tavor et al. is directed to a system which enables a user to purchase products (e.g. medical device) or services over the Internet. The system also offers guidance, recommendations and suggestions in order that the user may purchase their desired product. Henley is used to teach that medical equipment and services can be sold over the Internet. The specific product or service sold over the Internet is irrelevant, since Henley provides a teaching that medical products and services can be sold online. However, Bui et al. was used for the mere fact to suggest that ambulatory monitoring devices are widely used by users at their home locations or alternative care environments. Therefore, the straightforward combination of Tavor and Henley alone would teach the claimed invention, seeing as the combination teaches the sale of medical equipment over the Internet. Tavor also discloses a function which is configured to send questions to the user to elicit answers from the user to help in the recommendation process (C. 10, lines 21-29, 54-59). Therefore, as disclosed by the Applicant, the claims require that a plurality of questions be presented that are designed to establish certain user preferences and data. Tavor's questions are designed for the same purpose, in order to recommend or advise the user on a specific product.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Henley teaches that medical services and products can be acquired online, since

Art Unit: 3639

Tavor does not mention the type of product that is sold. The fact that the systems differ is irrelevant. Therefore the rejection is deemed proper and maintained.

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims **1-6, 19-24, 35 and 40** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claims 1-6, 19-24, 35 and 40**, the recitation “question is designed to determine” is vague and indefinite. It is unclear to the Office how the Applicant is “determining” the desired answers from the user. Appropriate correction is required in the indicated claims and any subsequent recitations.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **1-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavor et al., U.S. Patent No. 6,070,149 in view of Henley, Pub. No. US/2002/0065758 A1 and Bui et al., U.S. Patent No. 6,830,549 B2.

As per **Claims 1, 14, 17 and 19**, Tavor et al. discloses a system coupled to a network to provide a customer with information for a recommended system, the computer system comprising:

- an application server to direct a query page to the customer via the network, the query page comprising a plurality of questions and a plurality of answer choices for each question, wherein the plurality of questions are designed to establish whether at least one of a plurality of systems is suitable as a possible system for the customer (Col. 3, lines 19-24, 33-37; Col. 10, lines 54-59; see also Figures 3 and 22);
- a comparison program to receive the customer's answer choices and compare the customer's answer choices to a plurality of predicted answer choices, each of the plurality of predicted answer choices corresponding to a specific system (Col. 12, lines 48-59; also see Figure 5); and

Art Unit: 3639

- a server to provide a results page to the customer via the network, the results page providing the customer with the specific system as a recommended system if the customer's answer choices match the predicted answer choices corresponding to the specific system (Col. 9, lines 38-48; also see Figure 6).

Tavor et al. fails to disclose that the product being sold over the Internet is an ambulatory monitoring (AM) system. However, Henley teaches selling medical products or services online (Para. 19), while Bui et al. teaches that an AM system with a data recorder can be purchased (Col. 2, lines 62-67; Col. 3, lines 1-7). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Tavor et al. and include the product being a medical device such as an ambulatory monitoring system as taught by Henley and Bui et al. because it greatly improves the convenience of the system by providing the user with a medical device that is widely used and has many different models, which a user would need help in determining which system to purchase.

As per **Claims 2-6 and 20-24**, Tavor et al. further discloses a system that determines the needs of the user (Col. 3, lines 31-37). Tavor et al. fails to disclose the specific questions used to determine the user's need. However, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use any questions to determine the user's need for the product.

As per **Claims 7, 8, 10, 11, 16, 18, 25, 26, 29-33, 38 and 39**, Tavor et al. discloses the use of HTML, XML, Java applets and Java scripts within the system (Col. 2, lines 21-28, 33-34,

Art Unit: 3639

40-41; Col 34, lines 35-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to write the application server, comparison program, query page, and results page in Java applets and Java scripts.

As per **Claim 9**, Tavor et al. further discloses a system wherein the plurality of predicted answer choices and the corresponding specific systems are stored in a product selector file (Col. 8, lines 36-47; Col. 12, lines 48-59; see also Figures 3 and 5).

As per **Claims 12, 13 and 28**, Tavor et al. fails to disclose a system wherein each question and query page have an associated link to a help page. Official notice is taken that help pages are old and well known in the art to guide users through websites when they are unclear of what to do as shown in Henley (Figures 12-14). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Tavor et al. and include a help page associated with each question and query page because it greatly improves the convenience of the system by providing the user with efficiency and a system that is user-friendly.

As per **Claim 27**, Tavor et al. further discloses a system wherein each question is a multiple-choice question (Col. 8, lines 36-47; see also Figure 3).

As per **Claims 35 and 40**, Tavor et al. discloses a method of utilizing a computer system coupled to a network to assist a customer to configure a system from among a plurality of systems, components and software, the method comprising the acts of:

- connecting a customer communication system to a computer system provided by a system supplier (Col. 3, lines 19-24);
- routing a request for assistance from the customer to a product selector file written in extensible markup language (XML), wherein the product selector file fills a template with questions stored in the product selector file (Col. 2, lines 21-28; Col. 9, lines 29-49; Col. 10, lines 22-29);
- delivering the template to a customer, the template including the plurality of questions are designed to establish whether at least one of a plurality of AM systems is suitable as a possible AM system for the customer, further wherein at least one of the plurality of questions establishes the type of data recorder to be used with the AM system (Col. 3, lines 19-24, 33-37; Col. 10, lines 54-59; also see Figures 3 and 22);
- completing the template with the customer communication system and transmitting it to the computer system (Col. 9, lines 39-49);
- receiving a completed template from the customer (Col. 3, lines 31-41; Col. 8, lines 30-47; Col. 9, lines 39-49; Col. 10, lines 54-59; also see Figure 6); and
- determining a recommended system and configuration by comparing customer data derived from the completed template to supplier data stored in the computer system in a product configuration file written in XML, wherein the product configuration file fills a results page with the recommended system configuration for delivery to the

Art Unit: 3639

customer communication system (Col. 9, lines 38-48; Col. 12, lines 48-59; see also Figures 5 and 6).

Tavor et al. fails to disclose that the product being sold over the Internet is an ambulatory monitoring (AM) system. However, Henley teaches selling medical products or services online (Para. 19), while Bui et al. teaches that an AM system can be purchased (Col. 2, lines 62-67; Col. 3, lines 1-7). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Tavor et al. and include the product being a medical device such as an ambulatory monitoring system as taught by Henley and Bui et al. because it greatly improves the convenience of the system by providing the user with a medical device that is widely used and has many different models, which a user would need help in determining which system to purchase.

As per **Claim 36**, Tavor et al. further discloses a method wherein routing comprises activating a link in a page to an application server (Col. 3, lines 19-24).

As per **Claim 37**, Tavor et al. further discloses a method wherein the application server routes the request to the product selector file (Col. 3, lines 19-24).

As per **Claim 41**, Tavor et al. further discloses a system wherein the customer communication system is a second computer system having an interface coupled to the Internet (Col. 3, lines 19-24).

As per **Claim 43**, Tavor et al. further discloses a system wherein determining comprises using a program to compare the customer data to the plurality of system configurations of components and software (Col. 3, lines 48-59).

5. Claims **15, 34, 42 and 44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavor et al., U.S. Patent No. 6,070,149 in view of Henley, Pub. No. US/2002/0065758 A1 and Bui et al., U.S. Patent No. 6,830,549 B2. as applied to claims **1 and 40** above, and further in view of Henson, U.S. Patent No. 6,167,383.

As per **Claim 15 and 34**, Tavor et al. fails to disclose a system wherein a specific configuration of a system comprises a software package. However, Bui et al. teaches of an AM that is programmable (Col. 2, lines 62-67; Col. 3, lines 1-7). Nevertheless, Henson teaches configuring a system to include a software package (Col. 10, lines 11-12). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Tavor et al. and include a configuration comprising a software package as taught by Henson because it greatly improves the system by allowing the user more flexibility in configuring their system.

As per **Claims 42 and 44**, Tavor et al. fails to disclose a method wherein the supplier data comprises data for a plurality of system configurations of components and software, and a results page with the data for a specific system configuration of components and software. However, Henson teaches supplier data for a plurality of system configurations and then

Art Unit: 3639

presenting the results to a user (Col. 2, lines 61-67; Col. 3, lines 1-12; Col. 10, lines 11-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Tavor et al. and include data for a plurality of system configurations and then presenting the results to the user because it greatly improves the flexibility of the system by providing the user with more options and a system that is user-friendly.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is

Art Unit: 3639

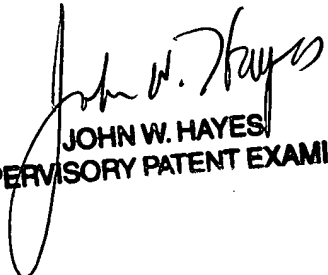
respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FSJ


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Fadey S Jabr
Examiner
Art Unit 3639

Art Unit: 3639

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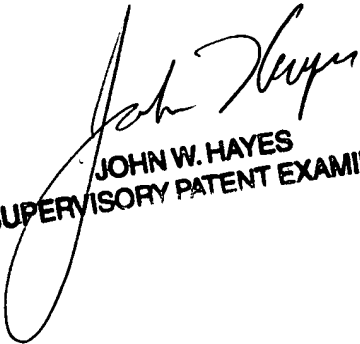
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JOHN W. HAYES
SUPERVISORY PATENT EXAMINER